



SENATE BILL 546: Amd LLC Laws/Paternity Docs/Spouse Supp.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 28, 2023
Introduced by:	Sen. Sawrey	Prepared by:	Susan Sitze
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *Senate Bill 546 would do the following:*

- *Create a new type of ownership interest in a limited liability company (LLC) after a person ceases to be a member due to being declared incompetent or his or her death.*
- *Remove a filing requirement for documents establishing paternity for children born out of wedlock.*
- *Amend the laws on alimony and postseparation support for dependent spouses.*

CURRENT LAW/BILL ANALYSIS:

Section 1 - Chapter 57D Limited Liability Company Act

Currently, under G.S. 57D-3-02 [Cessation of membership], a person ceases to be a member of an LLC upon any of the following:

- The person becomes a debtor in bankruptcy.
- The person executes an assignment for the benefit of creditors under any applicable law.
- The person has a receiver, trustee, or liquidator appointed for the person or his or her property.
- The person is declared incompetent or passes.

When any of the above occur, the person or the person's estate will automatically become an economic interest owner entitled only to the economic interest attributable to the person's ownership interest. G.S. 57D-3-02.

Under G.S. 57D-3-04 [Information rights], a member of an LLC may obtain documents including, but not limited to, the following: the articles of organization, the operating agreement, federal, state, or local income tax returns, a list of names and last known mailing addresses of current interest owners, and information from which the status of the business and financial condition of the LLC may be ascertained.

Under G.S. 57D-6-02(2) [Grounds for judicial dissolution], a superior court may dissolve an LLC in a proceeding brought by a member if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and Chapter 57D of the General Statutes or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

Section 1(a) would amend and create new definitions in Chapter 57D (North Carolina Limited Liability Company Act) of the General Statutes.

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A "special economic interest owner" would mean " a person who owns an economic interest and, as provided in G.S. 57D-3-02 [Cessation of membership], has a right to information and to seek dissolution but is not a member."

A "special economic interest owner" would be included in the definitions of "economic interest owner" and "interest owner."

Section 1(b) would add a new subsection to G.S. 57D-3-02 [Cessation of membership] providing that when a member dies or is declared incompetent to manage his or her person or property, that member's estate, or the member through his or her designated agent or guardian, would automatically become a special economic interest owner entitled to the following:

- The economic interest attributable to the member's ownership interest.
- The member's information rights as described in G.S. 57D-3-04 [Information rights].
- The member's standing to seek judicial dissolution under G.S. 57D-6-02(2) [Grounds for judicial dissolution] or under an alternative remedy, if applicable, in the operating agreement.

Section 2 – Chapter 29 Intestate Succession – Article 6 Children Born Out of Wedlock

Currently, under G.S. 29-19, a child born out of wedlock is entitled through intestate succession to take by, through and from the following:

- The child's mother and other maternal kindred.
- Any person adjudged to be the child's father pursuant to Chapter 49 of the General Statutes.
- Any person who, during his and the child's lifetime, has acknowledged himself as the father in a written instrument executed before a certifying officer and filed with the clerk of the superior court.
- Any person who died prior to or within one year after the birth of the child and can be established as the father by DNA testing.

Section 2(a) would no longer require the written document executed by a person acknowledging himself to be the father of a child born out of wedlock before a certifying officer to be filed with the clerk.

Section 2(b) makes conforming changes.

Section 3 - Chapter 50 Divorce and Alimony

Section 3(a) would define "cohabitation" in G.S. 50-16.1A [Definitions.] to mean the act of two adults dwelling together continuously and habitually in a private heterosexual relationship, even if the relationship is not solemnized by marriage, or a private homosexual relationship. Cohabitation is evidenced by the voluntary mutual assumption of those marital rights, duties, and obligations which are usually manifested by married people, and which include, but are not necessarily dependent on, sexual relations.

Alimony

Currently, under G.S. 50-16.3A [Alimony], a court must not award alimony to a dependent spouse if it finds the dependent spouse participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation. If the court finds the supporting spouse participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation, then the court shall order alimony be paid to the dependent spouse. If the court finds that both the dependent and supporting spouse participated in an act of illicit sexual behavior then alimony shall be denied or awarded in the discretion of the court. Any act that has been condoned by either party shall not be considered by the court.

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Section 3(b) would prohibit a court from awarding alimony to a dependent spouse if the court finds that the dependent spouse engaged in cohabitation with another prior to a divorce decree.

Postseparation Support

Currently, under G.S. 50-16.2A [Postseparation Support], a dependent spouse is entitled to an award of postseparation support from a supporting spouse if the court finds the resources of the dependent spouse are not adequate to meet their needs and the supporting spouse has the ability to pay. G.S. 50-16.9 [Modification of Order.] allows either spouse to file a motion with the court to modify the postseparation support order based on a change in circumstances and provides that when a dependent spouse receiving postseparation support remarries or engages in cohabitation, the postseparation support shall terminate.

Section 3(c) would clarify that when a dependent spouse receiving postseparation support pursuant to a court order engages in an act of illicit sexual behavior, the postseparation support shall terminate.

EFFECTIVE DATE: Section 1 would become effective October 1, 2023, and apply to requests for information and actions for dissolution commenced on or after that date. Section 2 would be effective when it becomes law and apply to the estates of decedents opened on or after that date. Section 3 would become effective October 1, 2023. The remainder of this act would be effective when it becomes law.

**Anna Parsons and Kristen Harris, Staff Attorneys, substantially contributed to this summary.*